IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 9381 OF 2007

Shri Nagnath Vasantrao Arlikar ..Petitioner

Vs.

1. The Depot Manager, MSRTC,
Solapur and anr. ..Respondents

Ms. Seema Sarnaik with Mr. Ameya Tamhane for petitioner.

CORAM: B.H. MARLAPALLE, J.

Date : December 20, 2007.

P.C.:

1. Heard Ms. Sarnaik the learned counsel for the petitioner, who is aggrieved by the order passed by the Industrial Court at Solapur thereby allowing Revision Application (ULP) No. 23 of 2005 filed by the present respondents as per the Judgment and Order dated 28/11/2007.

2. The petitioner joined the Corporation as a Conductor sometimes in the year 1981 and on 30/5/2004 after his duty as a Conductor was over, he deposited

the tickets tray with the Clerk at the Depot and on 31/5/2004 he was informed that from his tray 46 tickets of Rs.10/- denomination made for Senior Citizen were missing and thus there was misappropriation of Rs.460/-. This was on the basis of the report submitted by the Traffic Inspector on the same day. The petitioner submitted his reply on 31/5/2004 and contended that he was not aware of the alleged loss of Rs.460/- and there was no such remark when he handed over the tray on 30/5/2004 to the Clerk of the Depot. The petitioner was suspended on 31/5/2004 and this suspension was revoked by the order dated 26/6/2004. In the meanwhile charge-sheet was issued on 31/5/2004 itself which was replied to by the petitioner on 15/6/2004. Departmental enquiry was conducted in which the petitioner was defended by his representative. The Enquiry Officer submitted his report and held that the charges of misappropriation were duly proved against the petitioner. Consequently, second show cause notice was issued on 24/8/2004 proposing the punishment of dismissal from service. The petitioner immediately rushed to the Labour Court rather than filing a reply to the said

second show cause notice and filed Complaint (ULP) No. 73 of 2004 before the Labour Court on 26/8/2004 along with an application for interim relief under Section 30(2) of the M.R.T.U. & P.U.L.P. Act, 1971. Though the respondent-Corporation opposed the said application by filing a specific reply and pointing out, in addition, the unsatisfactory service record of the petitioner, the learned Judge of the Labour Court was pleased to allow the said application for interim relief and by his order dated 18/11/2004 the Corporation was restrained from taking any action on the basis of the second show cause notice dated 24/8/2004 till the final disposal of the complaint. The Corporation challenged the said interlocutor order passed by the Labour Court by filing Revision Application (ULP) No. 23 of 2005 and as noted earlier the same has been allowed and the order passed by the Labour Court on 18/11/2004 has been set aside as well as the application at Exh. U-2 filed in the complaint has been dismissed.

3. Ms. Sarnaik the learned counsel for the petitioner reiterated the very same grounds that when

the tray was submitted by the petitioner on 30/5/2004 there was no complaint of shortage of tickets and in any case subsequently the petitioner had given in writing that these tickets were missing for which he could not be held responsible and, therefore, there was no case even prima facie of misappropriation. However, these are not the grounds on the basis of which the application at Exh.U-2 was allowed by the learned Judge of the Labour Court. Some of the reasons given by the learned Judge in support of her order need to be reproduced as under:-

> "At the initial stage I feel that the dismissal order based on the Departmental Enquiry is in respect of misconduct of misappropriation. Admittedly the complainant has deposited amount of Rs.460/- on the very date 31/5/2004 immediately. The arguments submitted by the Law Officer Marathe that his punishment is based on his earlier record. For six times prior to the said incident he was punished. His earlier record is not good. I feel that the said submissions are not

> acceptable one because for the earlier misconduct he has been punished and after imposing the punishment that matter ends. The earlier misconduct should not be taken into consideration while imposing the punishment of another misconduct otherwise it will be double jeopardy as per the provisions of Section 300 of Cr.P.C."

. The learned Judge of the Labour Court gave justification in the following terms:-

> "The complainant is a conductor served with the opponent from the year 1981 and the dismissal punishment seems to be harsh. At the interim stage it is also required to be considered that he has three daughters, one son, aged mother and wife dependent on his income. I find that prima facie case in favour of the complainant that if he will be dismissed in view of the show cause notice dated 24/8/2004, it will be unjust on his part."

4. The learned Member of the Industrial Court rightly stepped in and corrected the patently erroneous approach of the Labour Court in granting interim relief to the complainant. It was pointed out to the Labour Court that (a) a departmental enquiry was conducted in keeping with the principles of natural justice, (b) the Enquiry Officer had held him guilty of the charge of misappropriation, (c) the complainant's past record of service was far from satisfactory in as much as on 6 different occasions for similar acts he was punished and even otherwise if he would be dismissed from service he had the departmental remedy of appeal etc.

5. None of these issues have been appreciated and addressed in keeping with the law laid down while entertaining an application filed under Exh.U-2. The Industrial Court referred to the different stands taken by the petitioner from time to time. Initially his reply was that there was no loss when he submitted the tray on 30/5/2004. Subsequently when he was to submit a written reply he admitted that the tickets

were missing/lost and went to state that this had happened 15 days prior to 30/5/2004. But when he came before the Enquiry Officer he totally disowned all the statements and took a plea that he was being victimised. The Industrial Court also noted that the missing tickets were not in one sequence and they were at random which clearly indicated, at least prima facie, that they were removed deliberately.

6. It is well recognised that the Labour Court in the pending complaint has the powers to set aside any order of punishment, including that of dismissal, if it records a finding that the employer was guilty of unfair labour practice as alleged while imposing such a punishment. In addition, the Labour Court also has the powers to grant reinstatement with full backwages. Having regards to these well established powers of the Labour Court, the Industrial Court rightly allowed the revision and dismissed the application at Exh.U-2. Inspite of the alleged serious acts having been proved against the petitioner, he remained in service for almost three years now and, therefore, there is no reason to restrain the Corporation from its proposed

action on the second show cause notice.

7. I am, therefore, satisfied that the impugned order passed by the Industrial Court at Solapur does not call for any interference in this petition under Article 227 of the Constitution and hence the petition is rejected summarily.

. Needless to mention that the pending complaint before the Labour Court shall be allowed to be amended, if so required and the same shall be heard and decided on its own merits.

. Ms. Sarnaik made an oral application for stay of this order. The application is rejected.

(B.H. Marlapalle,J.)